

Update: Crime Victim Rights Manual (Revised Edition)

CHAPTER 4

Protection From Revictimization

4.10 Revocation of Release Under the Crime Victim's Rights Act (CVRA)

Effective July 20, 2006, 2006 PA 316 amended MCL 791.240a to require revocation of a sex offender's parole under certain circumstances. Insert the following text on page 62 after the first sentence of the first paragraph in this section:

If an offender required to register under the Sex Offenders Registration Act willfully violates the Act, the parole board must revoke the offender's parole. MCL 791.240a(2).

CHAPTER 5

Victim Privacy

5.7 Defense Discovery of Privileged Communications or Confidential Records

A. Privileged Communications

10. Abrogation of Privileges in Civil Child Abuse or Neglect Proceedings

Effective July 6, 2006, 2006 PA 264 amended MCL 722.623 to further specify what members of the social work and social service professions are required to report suspected child abuse or neglect. Therefore, replace the bulleted list on page 95 with the following:

- physicians;
- physician's assistants;
- dentists;
- registered dental hygienists;
- medical examiners;
- nurses;
- persons licensed to provide emergency medical care;
- audiologists;
- psychologists;
- marriage and family therapists;
- licensed professional counselors;
- social workers;
- licensed master's social workers;
- licensed bachelor's social workers;
- registered social service technicians;
- social service technicians;
- school administrators;
- school counselors or teachers;

- law enforcement officers;
- members of the clergy; and
- regulated child care providers.

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CHAPTER 5

Victim Privacy

5.4 Defense Discovery of Written or Recorded Statements by Victims

Exculpatory information or evidence.

Insert the following text before the last paragraph on page 84:

A defendant is entitled to disclosure of all exculpatory evidence, even when the evidence was made known only to a law enforcement officer and not to the prosecutor. *Youngblood v West Virginia*, 547 US ___, ___ (2006). In *Youngblood*, a defendant was convicted of two counts of sexual assault, two counts of brandishing a firearm, and one count of indecent exposure. All charges arose from a single incident involving the defendant, three women, and the defendant's friend. The defendant's convictions were based

“principally on the testimony of the three women that they were held captive by Youngblood and a friend of his, statements by [one of the women] that she was forced at gunpoint to perform oral sex on Youngblood, and evidence consistent with a claim by [the same victim] about disposal of certain physical evidence of their sexual encounter.” *Youngblood, supra* at ___.

Several months after the defendant was sentenced, he learned that an investigator had discovered “new and exculpatory evidence” concerning his case. The evidence was

“in the form of a graphically explicit note that both squarely contradicted the State's account of the incidents and directly supported Youngblood's consensual-sex defense. The note, apparently written by [two of the victims], taunted Youngblood and his friend for having been ‘played’ for fools, warned them that the girls had vandalized the house where Youngblood brought

them, and mockingly thanked Youngblood for performing oral sex on [the other victim].” *Youngblood, supra* at ____.

**Brady v Maryland*, 373 US 83 (1963).

Allegedly, the potentially exculpatory note had been given to an officer involved in investigating the defendant’s case. The officer read the note, refused to take possession of it and told the individual who had given him the note to destroy it. The defendant claimed that failure to disclose the note was a *Brady** violation and moved to set aside the verdict. The trial court denied the defendant’s motion and a divided Supreme Court of Appeals affirmed the trial court “without examining the specific constitutional claims associated with the alleged suppression of favorable evidence.” *Youngblood, supra* at _____. In its review of Youngblood’s petition, the Court noted that “Youngblood clearly presented a federal constitutional *Brady* claim to the [West Virginia] Supreme Court.” *Youngblood, supra* at _____. Because none of the West Virginia courts addressed the *Brady* issue, the United States Supreme Court vacated the West Virginia appellate court’s judgment and remanded the case to obtain “the benefit of the views of the full Supreme Court of Appeals of West Virginia on the *Brady* issue.” *Youngblood, supra* at _____.

CHAPTER 8

The Crime Victim at Trial

8.14 Former Testimony of Unavailable Witness

C. Defendant's Right to Confront the Witnesses Against Him or Her

Insert the following text before the June 2005 update to page 264:

Whether hearsay evidence constitutes a “testimonial statement” barred from admission against a defendant where the defendant has not had an opportunity to cross-examine the declarant requires a court to conduct an objective examination of the circumstances under which the statement was obtained. *Davis v Washington*, 547 US ___, ___ (2006). Although the United States Supreme Court did not “produce an exhaustive classification of all conceivable statements . . . as either testimonial or nontestimonial,” the Court expressly stated:

“Statements are nontestimonial when made in the course of police interrogation under circumstances objectively indicating that the primary purpose of the interrogation is to enable police assistance to meet an ongoing emergency. They are testimonial when the circumstances objectively indicate that there is no such ongoing emergency, and that the primary purpose of the interrogation is to establish or prove past events potentially relevant to later criminal prosecution.” *Davis, supra* at ___ (footnote omitted).

Davis involved two separate cases (*Davis v Washington* and *Hammon v Indiana*) in which a defendant assaulted a victim, the victim answered questions posed by law enforcement personnel, the victim did not testify at trial, and the victim’s statement was admitted as evidence against the defendant. In one of the cases, *Davis v Washington*, the statements at issue arose from the victim’s (McCottry) conversation with a 911 operator during the assault. After objectively considering the circumstances under which the 911 operator “interrogated” McCottry, the Court concluded that the 911 tape, on which McCottry identified the defendant as her assailant and gave the operator additional information about the defendant, was not testimonial evidence barred from admission by the Confrontation Clause. According to the Court:

“[T]he circumstances of McCottry’s interrogation objectively indicate its primary purpose was to enable police assistance to meet an ongoing emergency. She simply was not acting as a witness; she was not *testifying*.” *Davis, supra* at ___ (emphasis in original).

In the other case, *Hammon v Indiana*, the statement at issue arose from answers the victim (Amy) gave to one of the police officers who responded to a “reported domestic disturbance” call at the victim’s home. Amy summarized her responses in a written statement and swore to the truth of the statement. In this case, the Court concluded that the circumstances surrounding Amy’s interrogation closely resembled the circumstances in *Crawford v Washington*, 541 US 36 (2004), and that the “battery affidavit” containing Amy’s statement was testimonial evidence not admissible against the defendant absent the defendant’s opportunity to cross-examine the victim. The Court summarized the similarities between the instant case and *Crawford*:

“Both declarants were actively separated from the defendant—officers forcibly prevented [the defendant in Amy’s assault] from participating in the interrogation. Both statements deliberately recounted, in response to police questioning, how potentially criminal past events began and progressed. And both took place some time after the events described were over. Such statements under official interrogation are an obvious substitute for live testimony, because they do precisely *what a witness does* on direct examination; they are inherently testimonial.” *Davis (Hammon)*, *supra* at ____ (emphasis in original).

CHAPTER 10

Restitution

10.5 Ordering Restitution in Conjunction With Informal Juvenile Dispositions, Conditional Sentences, Delayed and Deferred Sentences, and Drug Treatment Court Participation

C. Restitution Ordered in Conjunction With Delayed and Deferred Sentences and Dispositions Under the Holmes Youthful Trainee Act

Insert the following text before the last paragraph in subsection (C) on page 318:

An individual is eligible for sentencing under the youthful trainee act for more than one offense. In *People v Giovannini*, ___ Mich App ___, ___ (2006), the Court of Appeals held that a “defendant was not ineligible for sentencing under the [youthful trainee act] solely because he was convicted of two criminal offenses.” The Court explained: “Interpreting MCL 762.11 to permit placement under the [youthful trainee act] only in cases involving a single offense would work contrary to the discretion invested in the trial court and to the overall purpose of the act.” *Id.* at ___.

Update: Crime Victim Rights Manual (Revised Edition)

CHAPTER 4

Protection From Revictimization

4.11 Criminal Offenses That May Be Committed While Threatening or Intimidating a Victim

E. Malicious Use of the Telephone

Effective June 1, 2006, 2006 PA 60 and 61 expanded the conduct prohibited by MCL 750.540 and increased the severity of offenses committed under the statute. At the top of page 76, replace the first bullet and its corresponding content with the following language:

- MCL 750.540(5)(a) makes it a two-year felony to willfully and maliciously connect with, access, use, or interfere with any electronic medium of communication* or its content without authorization. Where a violation of MCL 750.540 results in any person's injury or death, the offense is a felony punishable by not more than four years. MCL 750.540(5)(b). In *People v Hotrum*, 244 Mich App 189 (2000), the Court of Appeals held that ripping a telephone cord from the wall during a domestic violence incident is conduct covered by this statute.

*Including the Internet, a computer, a computer program, a computer system, a computer network, a telephone, or a telegraph. MCL 750.540(6).

May 2006

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CHAPTER 5

Victim Privacy

5.9 Limitations on Access to Court Records

A. General Provisions Limiting Access to Court Records

Delete the November 2005 update to page 107. In an order dated March 29, 2006, the Michigan Supreme Court reversed the Court of Appeals and remanded the case to that Court for further proceedings. *UAW v Dorsey*, 474 Mich 1097 (2006).

CHAPTER 8

The Crime Victim at Trial

8.13 Testimonial Evidence of Threats Against a Crime Victim or a Witness to a Crime

C. Statutory Authority for the Admission of Threat Evidence in Cases Involving Domestic Violence

Effective March 24, 2006, and applicable to trials and evidentiary hearings started or in progress on or after May 1, 2006, a declarant's statements are admissible under specific circumstances in criminal cases involving domestic violence. 2006 PA 79. Immediately before Section 8.14 on page 260, add a new subsection as indicated above and insert the following text:

MCL 768.27c provides statutory authority for the admission under certain circumstances of a declarant's statement pertaining to injuries sustained by, or threats of injury to, the declarant. A declarant's statement may be admitted under MCL 768.27c if all of the following circumstances exist:

“(a) The statement purports to narrate, describe, or explain the infliction or threat of physical injury upon the declarant.

“(b) The action in which the evidence is offered under this section is an offense involving domestic violence.

Note: The definition of “domestic violence” in MCL 768.27c is substantially similar to the definition in MCL 400.1501(d), and by reference, to the definition in MCL 600.2157a(1)(b).^{*} MCL 768.27c(5)(b).

“(c) The statement was made at or near the time of the infliction or threat of physical injury. Evidence of a statement made more than 5 years before the filing of the current action or proceeding is inadmissible under this section.

“(d) The statement was made under circumstances that would indicate the statement's trustworthiness.

“(e) The statement was made to a law enforcement officer.” MCL 768.27c(1).

The statute includes, but does not limit, factors for determining whether a declarant's statement is trustworthy for purposes of MCL 768.27c(1)(d). To determine whether a statement is trustworthy, a trial court should consider:

^{*}See Section 5.7(A)(2) for a detailed discussion.

“(a) Whether the statement was made in contemplation of pending or anticipated litigation in which the declarant was interested.

“(b) Whether the declarant has a bias or motive for fabricating the statement, and the extent of any bias or motive.

“(c) Whether the statement is corroborated by evidence other than statements that are admissible only under this section.” MCL 768.27c(2).

Notice requirements apply if a prosecutor intends to introduce evidence of a declarant’s statement under MCL 768.27c:

“(3) If the prosecuting attorney intends to offer evidence under this section, the prosecuting attorney shall disclose the evidence, including the statements of witnesses or a summary of the substance of any testimony that is expected to be offered, to the defendant not less than 15 days before the scheduled date of trial or at a later time as allowed by the court for good cause shown.”

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CHAPTER 8

The Crime Victim at Trial

8.14 Former Testimony of Unavailable Witness

C. Defendant's Right to Confront the Witnesses Against Him or Her

Insert the following text after the January 2006 update to page 264:

In *People v Jones*, ___ Mich App ___, ___ (2006), the Court first affirmed that the admission of an unavailable witness's testimonial statement does not violate the Confrontation Clause if the defendant caused the witness to be unavailable. Concurring with *United States v Cromer*, 389 F3d 662 (CA 6, 2004), the *Jones* Court determined that because the witness's unavailability was procured by the defendant's wrongdoing, the defendant forfeited his constitutional right to confront that witness. In *Jones*, the only eyewitness to a shooting identified the defendant as the shooter in a statement to police. However, the witness refused to testify at trial regarding defendant's involvement in the shooting. At a separate hearing regarding his refusal to testify, the witness stated "that he feared retribution if he testified, particularly because certain individuals were present in the courtroom." *Jones, supra* at _____. The trial court admitted the witness's statement to police into evidence under MRE 804(b)(6). The Court of Appeals rejected defendant's assertion that the prosecutor failed to establish that defendant "engaged in or encouraged wrongdoing that was intended to, and did, procure the unavailability of the declarant as a witness," as required by MRE 804(b)(6). The Court of Appeals concluded that evidence that members of a gang to which defendant belonged threatened the witness satisfied the rule's requirements.

Update: Crime Victim Rights Manual (Revised Edition)

CHAPTER 2

The Legal Bases for Crime Victim Rights in Michigan

2.8 Assessments and Funding

A. Assessments of Convicted and Adjudicated Offenders

Effective January 1, 2006, 2005 PA 315 amended MCL 780.905(1). On page 25, replace the first sentence of this subsection with the following:

The court must order a “crime victim’s rights fund assessment” against “each person charged with an offense that is a felony, a serious misdemeanor, or a specified misdemeanor, that is resolved by conviction, by assignment of the defendant to youthful trainee status, by a delayed sentence or deferred entry of judgment of guilt, or in another way that is not an acquittal or unconditional dismissal” as follows:

CHAPTER 10

Restitution

10.19 Payment of Restitution When Defendant or Juvenile Is Sentenced to Jail or the Department of Corrections or Placed in a Juvenile Facility

B. Payment of Restitution When Defendant Is Sentenced to the Department of Corrections

At the end of the January 2006 update to page 340, add the following information:

Effective January 1, 2006, 2005 PA 316 added MCL 769.1k, which allows a court to impose and collect fines, costs, assessments, and fees. Also effective January 1, 2006, 2005 PA 325 added MCL 769.1l, which requires the Department of Corrections to deduct money from a prisoner's account to pay such fines, costs, assessments, and fees in the same manner as money is deducted to pay restitution. However, orders of restitution pursuant to MCL 791.220h or the Crime Victim's Rights Act are to receive priority over the orders described in MCL 769.1l. MCL 769.1l.

January 2006

Update: Crime Victim Rights Manual (Revised Edition)

CHAPTER 1

Mitigating the Psychological Effects of Victimization

1.2 Helping to Mitigate the Psychological Effects of Victimization

A. Enforce Victim's Rights Laws

Replace the first sentence of the second paragraph on page 8 with the following language:

The William Van Regenmorter* Crime Victim's Rights Act (CVRA), MCL 780.751 et seq., and Const 1963, art 1, § 24, give victims the right to participate in criminal and juvenile proceedings.

*Effective January 1, 2006, 2005 PA 184 added "William Van Regenmorter" to the act's title.

CHAPTER 2

The Legal Bases for Crime Victim Rights in Michigan

2.1 The Constitutional Basis for Crime Victim Rights in Michigan

On page 16, replace the paragraph following the quoted text with the following language:

Many of the rights enumerated above in subsection (1) are provided in the William Van Regenmorter* Crime Victim's Rights Act (CVRA), MCL 780.751 et seq. The assessment provided for in subsection (3) is contained in the Crime Victim Services Commission Act, MCL 781.901 et seq. This assessment is discussed in Section 2.8, below.

*Effective January 1, 2006, 2005 PA 184 added "William Van Regenmorter" to the act's title.

CHAPTER 2

The Legal Bases for Crime Victim Rights in Michigan

2.2 William Van Regenmorter* Crime Victim's Rights Act (CVRA)

At the top of page 18, change the title of Section 2.2 as indicated above and replace the first sentence of the first paragraph with the following language:

The William Van Regenmorter Crime Victim's Rights Act, MCL 780.751 et seq., implements many of the rights afforded to crime victims in Const 1963, art 1, § 24.

*Effective
January 1,
2006, 2005 PA
184 added
"William Van
Regenmorter"
to the act's title.

CHAPTER 2

The Legal Bases for Crime Victim Rights in Michigan

2.8 Assessments and Funding

B. Felony, “Serious Misdemeanor,” “Specified Misdemeanor,” and “Juvenile Offense” Defined

Effective January 1, 2006, 2005 PA 184 amended the list of “serious misdemeanors” in MCL 780.811(1)(a). On page 26, replace the bulleted list of “serious misdemeanors” with the following:*

- assault and battery, including domestic violence, MCL 750.81;
- aggravated assault, including aggravated domestic violence, MCL 750.81a;
- breaking and entering or illegal entry, MCL 750.115;
- fourth-degree child abuse, MCL 750.136b(6);
- contributing to the neglect or delinquency of a minor, MCL 750.145;*
- enticing a child for an immoral purpose, MCL 750.145a;
- using the internet or a computer to make a prohibited communication, MCL 750.145d (specifically, misdemeanor violations of the statute);*
- intentionally aiming a firearm without malice, MCL 750.233;*
- discharge of a firearm intentionally aimed at a person, MCL 750.234;
- discharge of a firearm intentionally aimed at a person resulting in injury, MCL 750.235;
- indecent exposure, MCL 750.335a;
- stalking, MCL 750.411h;
- injuring a worker in a work zone, MCL 257.601b(2);*
- leaving the scene of a personal-injury accident, MCL 257.617a;

*With the exception of renumbering the list as it appears in MCL 780.811(1)(a), the offenses listed in the five bullets at the top of page 27 were not changed by 2005 PA 184.

*2005 PA 184, effective January 1, 2006.

*2005 PA 184, effective January 1, 2006.

*2005 PA 184, effective January 1, 2006.

*2005 PA 184, effective January 1, 2006.

CHAPTER 2

The Legal Bases for Crime Victim Rights in Michigan

2.8 Assessments and Funding

D. Depositing Unclaimed or Refused Restitution in the “Crime Victim’s Rights Fund”

Effective January 1, 2006, 2005 PA 184 amended MCL 780.766(21), MCL 780.794(21), and MCL 780.826(18) to specify that restitution refused by a victim may be deposited in the “crime victim’s rights fund.” On page 29, change the title of the subsection as indicated above and replace the first sentence with the following:

If a person or entity entitled to restitution cannot be located, refuses to claim the restitution within two years, or refuses to accept the restitution, the restitution to which the person or entity is entitled must be deposited in the “crime victim’s rights fund.”

Replace the quoted text beginning at the bottom of page 29 with the following language:

“If a person or entity entitled to restitution under this section cannot be located, refuses to claim the restitution within 2 years after the date on which he or she could have claimed the restitution, or refuses to accept the restitution, the restitution to which that person or entity is entitled shall be deposited in the crime victim’s rights fund created under . . . MCL 780.904, or its successor fund. However, a person or entity entitled to that restitution may claim that restitution any time by applying to the court that originally ordered and collected it. The court shall notify the crime victim services commission of the application and the commission shall approve a reduction in the court’s revenue transmittal to the crime victim rights fund equal to the restitution owed to the person or entity. The court shall use the reduction to reimburse that restitution to the person or entity.” MCL 780.766(21), MCL 780.794(21), and MCL 780.826(18).

CHAPTER 3

Overview of the Crime Victim's Rights Act

*Effective
January 1,
2006, 2005 PA
184 added
"William Van
Regenmorter"
to the act's title.

3.1 Applicability and Structure of the William Van Regenmorter* Crime Victim's Rights Act (CVRA)

A. Offenses and Offenders Covered by the CVRA

On page 32, change the title of Section 3.1 as indicated above and replace the first sentence of that section with the following language:

The William Van Regenmorter Crime Victim's Rights Act, MCL 780.751 et seq., is divided into three articles, each dealing with different offenses, offenders, and courts.

CHAPTER 3

Overview of the Crime Victim's Rights Act

3.2 Definitions of Terms Used in the CVRA

E. "Defendant"

Effective January 1, 2006, 2005 PA 184 amended MCL 780.752(1)(c). On page 39, replace the first two sentences of the sole paragraph in this subsection with the following information:

In cases under the felony article of the CVRA, a "defendant" is "a person charged with, convicted of, or found not guilty by reason of insanity of committing a crime against a victim." MCL 780.752(1)(c). In cases under the misdemeanor article, a "defendant" is "a person charged with or convicted of having committed a serious misdemeanor against a victim." MCL 780.811(1)(b).

CHAPTER 3

Overview of the Crime Victim's Rights Act

3.2 Definitions of Terms Used in the CVRA

G. "Facility"

Effective January 1, 2006, 2005 PA 184 added the definition of "facility" to the definitions found in MCL 780.752(1). On page 40, insert the new subsection (G) as indicated above, and reletter the remaining subsections accordingly:

For purposes of MCL 780.756, MCL 780.763a, MCL 780.769a, and MCL 780.770, "facility" is defined in MCL 780.752(1)(d) as it is in MCL 330.1100b(1):

"Facility" means a residential facility for the care or treatment of individuals with serious mental illness, serious emotional disturbance, or developmental disability that is either a state facility or a licensed facility."

This definition of "facility" applies only to the term's use in MCL 780.756, MCL 780.763a, MCL 780.769a, and MCL 780.770, "and not with reference to a juvenile facility[.]" MCL 780.752(1)(d).

I. "Hospital"

On page 40, insert a new subsection (I)* as indicated above, and reletter the remaining subsections accordingly:

A definition of "hospital" was added to MCL 780.752(1) by 2005 PA 184, effective January 1, 2006. "Hospital" is defined in MCL 780.752(1)(h) as it is defined in MCL 330.1100b(7):

"Hospital" or "psychiatric hospital" means an inpatient program operated by the department for the treatment of individuals with serious mental illness or serious emotional disturbance or a psychiatric hospital or psychiatric unit licensed under [MCL 330.1137]."

*The terms defined in MCL 780.752(1) are listed alphabetically in the manual; however, "hospital" was inadvertently placed after the terms "juvenile" and "juvenile facility" in the amended statute.

CHAPTER 3

Overview of the Crime Victim's Rights Act

3.2 Definitions of Terms Used in the CVRA

P. "Serious Misdemeanor"*

Effective January 1, 2006, 2005 PA 184 amended the list of "serious misdemeanors" in MCL 780.811(1)(a). Replace the bulleted list beginning at the bottom of page 44 and continuing up to the **Note** near the middle of page 45 with the following list:*

- assault and battery, including domestic violence, MCL 750.81;
- aggravated assault, including aggravated domestic violence, MCL 750.81a;
- breaking and entering or illegal entry, MCL 750.115;
- fourth-degree child abuse, MCL 750.136b(6);
- contributing to the neglect or delinquency of a minor, MCL 750.145;*
- enticing a child for an immoral purpose, MCL 750.145a;
- using the internet or a computer to make a prohibited communication, MCL 750.145d (specifically, misdemeanor violations of the statute);*
- intentionally aiming a firearm without malice, MCL 750.233;*
- discharge of a firearm intentionally aimed at a person, MCL 750.234;
- discharge of a firearm intentionally aimed at a person resulting in injury, MCL 750.235;
- indecent exposure, MCL 750.335a;
- stalking, MCL 750.411h;
- injuring a worker in a work zone, MCL 257.601b(2);*
- leaving the scene of a personal-injury accident, MCL 257.617a;

*Formerly (N) but relettered due to the addition of "Facility" and "Hospital."

*With the exception of renumbering the list as it appears in MCL 780.811(1)(a), the offenses listed in the five bullets after the **Note** on page 45 were not changed by 2005 PA 184.

*2005 PA 184, effective January 1, 2006.

*2005 PA 184, effective January 1, 2006.

*2005 PA 184, effective January 1, 2006.

*2005 PA 184, effective January 1, 2006.

CHAPTER 4

Protection From Revictimization

4.4 Conditions of Pretrial Release to Protect a Named Person

Effective January 1, 2006, a new provision was added to MCR 6.106(D)(2). At the bottom of page 56, insert the following new sub-subsection (m), and reletter the remaining provisions accordingly:

“(m) comply with any condition limiting or prohibiting contact with any other named person or persons. If an order under this paragraph limiting or prohibiting contact with any other named person or persons is in conflict with another court order, the most restrictive provision of each order shall take precedence over the other court order until the conflict is resolved.”

CHAPTER 4

Protection From Revictimization

4.8 Limitations on Testimony Identifying a Victim's Address, Place of Employment, or Other Information

Replace the first sentence in the paragraph at the bottom of page 60 with the following language:

As a general rule in criminal cases, MCR 6.201(A)(1), as amended, requires disclosure to the opposing party of the names and addresses of all lay witnesses that a party may call as witnesses at trial.* (Before it was amended, MCR 6.201(A)(1) required a party to disclose the information for witnesses it *intended* to call at trial.) An alternative to the mandatory disclosure of a witness' name and address was added when MCR 6.201 was amended. Effective January 1, 2006, MCR 6.201(A)(1) permits a party to "provide the name of the witness and make the witness available to the other party for interview."

*Effective
January 1,
2006.

CHAPTER 4

Protection From Revictimization

4.10 Revocation of Release Under the Crime Victim's Rights Act (CVRA)

Effective January 1, 2006, 2005 PA 184 eliminated MCL 780.815(2). On page 63, delete the second sentence of the first paragraph and the quoted text following it.

CHAPTER 5

Victim Privacy

5.2 Defense Counsel Interviews of Crime Victim

Insert the following text at the beginning of Section 5.2, on page 80:

As an alternative to the mandatory disclosure of a witness' name and address, MCR 6.201(A)(1), as amended, permits a party to "provide the name of the witness and make the witness available to the other party for interview."*

*Effective
January 1,
2006.

CHAPTER 5

Victim Privacy

5.4 Defense Discovery of Written or Recorded Statements by Victims

At the top of page 83, replace the first two sentences of the first paragraph with the following text:

Under MCR 6.201(A)(2), a party must disclose to other parties, upon request, “any written or recorded statement pertaining to the case by a lay witness whom the party may call at trial”^{*} In addition, upon request, the prosecuting attorney must disclose “any police report and interrogation records concerning the case” MCR 6.201(B)(2), as amended, effective January 1, 2006.

Note: In the third paragraph on page 83, quoted excerpts from MCR 6.201(A)(2) should read “whom the party *may* call at trial.” Amendments to MCR 6.201(A)(2), effective January 1, 2006, eliminated any reference to a party’s intent to call a witness at trial.

^{*}As amended, effective January 1, 2006. When the amendments to MCR 6.201 were adopted, the Michigan Supreme Court did not approve a proposed provision in MCR 6.610 that would have addressed discovery in misdemeanor cases.

CHAPTER 5

Victim Privacy

5.8 Access to Victim Impact Information Prior to Trial

Replace the fourth sentence in the first paragraph on page 104 with the following language:

MCR 6.201(A)(2) requires the disclosure of “any written or recorded statement pertaining to the case by a lay witness whom the party may call at trial[.]”*

*As amended,
effective
January 1,
2006.

CHAPTER 5

Victim Privacy

5.9 Limitations on Access to Court Records

B. Limitations on Access to Identifying Information Under the CVRA

Felony cases.

Insert the following paragraph on page 108, immediately before the paragraph beginning with “**Juvenile delinquency cases**”:

A record of a victim’s oral or written statement made at a defendant’s parole board hearing or other hearing in which the defendant’s release is at issue is exempt from disclosure under Michigan’s Freedom of Information Act. MCL 780.771(4).*

Effective January 1, 2006, MCL 780.769a(1) authorizes a crime victim to make a written request for notification of placement changes involving a defendant who was found not guilty by reason of insanity and placed in a hospital or facility.* The victim’s address and telephone number maintained by the hospital for notification purposes are exempt from disclosure under Michigan’s Freedom of Information Act. MCL 780.769a(3).

*Effective January 1, 2006. 2005 PA 184.

*2005 PA 184. See this month’s update adding new Section 7.13 for a discussion of notice requirements.

CHAPTER 6

Victim Consultation With the Prosecuting Attorney & Other Rights

6.2 The Victim's Right to Consult With the Prosecuting Attorney Prior to a Plea Agreement or Diversion in Criminal Cases

Insert the following text after the last paragraph on page 119:

Effective January 1, 2006,* statutory law requires the court to order full restitution in cases that are resolved without an acquittal or an unconditional dismissal. Language was added to the restitution provisions in all three articles of the CVRA—MCL 780.766(2), MCL 780.794(2), and MCL 780.826(2).

*2005 PA 184.

In the felony and misdemeanor articles, the following language was added to the existing provision in each section:

“For an offense that is resolved by assignment of the defendant to youthful trainee status, by a delayed sentence or deferred judgment of guilt, or in another way that is not an acquittal or unconditional dismissal, the court shall order the restitution required under this section.” MCL 780.766(2); MCL 780.826(2).

In the juvenile article, the amended language states:

“For an offense that is resolved informally by means of a consent calendar diversion or by another informal method that does not result in a dispositional hearing, by assignment to youthful trainee status, by a delayed sentence or deferred judgment of guilt, or in another way that is not an acquittal or unconditional dismissal, the court shall order the restitution required under this section.” MCL 780.794(2).

CHAPTER 7

Victim Notification

7.4 Charging Documents in Juvenile Delinquency and Serious Misdemeanor Cases

Effective January 1, 2006, 2005 PA 184 amended MCL 780.781(1)(f) and MCL 780.811(1)(a) to expand the list of offenses to which the juvenile and misdemeanor articles of the CVRA applies. Near the top of page 138, add the following bullet to the top of the bulleted list:

- injuring a worker in a work zone, MCL 257.601b(2);

Near the middle of page 138, replace the paragraph immediately following the bulleted list with the following text:

MCL 780.811(1)(a)(*xv*), (*xvi*), and (*xvii*) contain the offenses to which this requirement applies when the case falls under the misdemeanor article of the CVRA. MCL 780.811a, as amended, effective January 1, 2006.* Those offenses are:

- operating a vehicle while under the influence of or impaired by intoxicating liquor or a controlled substance, or with an unlawful blood-alcohol content, MCL 257.625;
- selling or furnishing alcoholic liquor to an individual less than 21 years of age, MCL 436.1701; and
- operating a vessel while under the influence of or impaired by intoxicating liquor or a controlled substance, or with an unlawful blood-alcohol content, MCL 324.80176(1) or (3).

*2005 PA 184.

CHAPTER 7

Victim Notification

7.11 Notification of Appeal Proceedings and Release Pending Appeal

Replace the second bullet on page 146 with the following information:

- “[t]he time and place of any appellate court oral arguments and any changes in the time or place of those arguments,” MCL 780.768a(1)(c), MCL 780.796(1)(c), and MCL 780.828(1)(c).*

*2005 PA 184,
effective
January 1,
2006.

Replace the third bullet on page 146 with the following information:

Effective January 1, 2006,* whether or not requested by a victim, all three articles of the CVRA require the prosecuting attorney to “provide the victim with a brief explanation in plain English of the appeal process, including the possible dispositions.” MCL 780.768a(3), MCL 780.796(3), and MCL 780.828(3).

*2005 PA 184.

CHAPTER 7

Victim Notification

7.12 Notification of the Prisoner's or Juvenile's Status Within Corrections or Juvenile Agencies

Effective January 1, 2006, 2005 PA 184 amended MCL 780.763a to provide that a victim is entitled to notification of a defendant's status when the defendant was ordered to a hospital or facility after being found not guilty by reason of insanity.

Add the following paragraph after the first full paragraph on page 148:

MCL 780.763a(1) requires the prosecuting attorney to provide the victim a form, which the victim may then send to a hospital or facility to receive notifications regarding a defendant who was found not guilty by reason of insanity and placed in a hospital or facility. The form must contain the hospital's or facility's address. *Id.**

*See the new Section 7.13 (in this month's updates) for information on the new notice provisions.

A. Revocation of Defendant's Probation

On page 148, insert a new subsection (A) as indicated above, reletter the succeeding subsections accordingly, and add the following text:

Effective January 1, 2006, 2005 PA 184 added a notice provision when a defendant is incarcerated after probation revocation. MCL 780.763a(2) states:

"If the defendant is sentenced to probation, the department of corrections or the sheriff, as applicable, shall notify the victim if the probation is revoked and the defendant is sentenced to the department of corrections or to jail for more than 90 days. The notice shall include a form the victim may submit to the department of corrections or the sheriff to receive notices under [MCL 780.769, MCL 780.770, or MCL 780.770a]."

B. Prisoner's Earliest Release or Parole Eligibility Date*

Effective January 1, 2006, 2005 PA 184 eliminated the "one time only" limit to the notice addressed in MCL 780.769(1)(a). The "one time only" limit remains effective in the CVRA's juvenile and misdemeanor articles. In the last paragraph on page 148, delete the reference to MCL 780.769(1)(a).

*Formerly (A) but relettered due to the addition of new subsection (A), above.

C. Intent to Place Prisoner in Special Alternative Incarceration Program (“Boot Camp”)*

After the existing paragraph on page 149, insert the following text:

Effective January 1, 2006, 2005 PA 184 added to the CVRA’s felony article a notice provision specific to defendants considered by the Department of Corrections to be candidates for placement in an SAI unit. MCL 780.763a(3) states:

“If the department of corrections determines that a defendant who was, in the defendant’s judgment of sentence, not prohibited from being or permitted to be placed in the special alternative incarceration unit established under . . . MCL 798.13, meets the eligibility requirements of . . . MCL 791.234a, the department of corrections shall notify the victim, if the victim has submitted a written request for notification under section 19, of the proposed placement of the defendant in the special alternative incarceration unit not later than 30 days before placement is intended to occur. In making the decision on whether or not to object to the placement of the defendant in a special alternative incarceration unit as required by . . . MCL 791.234a, the sentencing judge or the judge’s successor shall review an impact statement submitted by the victim under section 14.”

*Formerly (B) but relettered due to the addition of new subsection (A) in this month’s updates.

CHAPTER 7

Victim Notification

7.12 Notification of the Prisoner's or Juvenile's Status Within Corrections or Juvenile Agencies

F. Defendant's or Juvenile's Escape From Custody*

*Formerly (E) but relettered due to the addition of new subsection (A) in this month's updates.

*Formerly (F) but relettered due to the addition of new subsection (A) in this month's updates.

Insert the following **Note** on page 151 immediately before subsection (G):*

Note: Effective January 1, 2006, if requested, a crime victim must be notified of a defendant's escape from a hospital or facility when the defendant was ordered there after being found not guilty by reason of insanity. 2005 PA 184; MCL 780.770. See the new Section 7.13 (added by this month's updates) for detailed information on these new notice requirements.

CHAPTER 7

Victim Notification

7.13 Notification of a Defendant's Status Within a Hospital or Facility

Effective January 1, 2006, 2005 PA 184 added notice requirements regarding felony defendants found not guilty by reason of insanity and committed to a hospital or facility. On page 156, add the new Section 7.13 as indicated above and renumber the remaining sections accordingly. Insert the following text after new Section 7.13:

When a defendant found not guilty by reason of insanity is placed by court order in a hospital or facility,* the victim must make a written request for the notice authorized under MCL 780.769a. MCL 780.769a(1). MCL 780.763a(1) requires the prosecuting attorney to provide the victim with a form by which the victim can request the notice authorized under MCL 780.769a. The form must include the address of the hospital or facility to which the form may be submitted. MCL 780.763a(1).

If a victim has made the required written request, the director of a hospital or facility must give the victim notice of a defendant's status within the hospital or facility to which the defendant was ordered. MCL 780.769a(1).

Notification of transfer or release. When the victim has so requested, the director of the hospital or facility where the defendant is placed must notify the victim when any of the following status changes are pending:

- the defendant's pending transfer to a less secure hospital or facility, MCL 780.769a(1)(a);
- the defendant's pending transfer to "alternative care or treatment, community placement, or aftercare reintegration," MCL 780.769a(1)(b); and
- whether temporary or permanent, the defendant's "pending leave, absence, furlough, or other release from confinement," MCL 780.769a(1)(c).

The notice required by MCL 780.769a(1) must be given "by any means reasonably calculated to give the victim prompt actual notice." MCL 780.769a(2).

Notification of a defendant's escape. If so requested, a victim must be immediately notified of a defendant's escape from a hospital or facility to which the defendant "accused, convicted, imprisoned, hospitalized, or admitted for committing a crime against a victim" was ordered. MCL 780.770(1).* Notice of a defendant's escape from a hospital or facility must

*See this month's updates to Section 3.2 for definitions of "hospital" and "facility."

*As amended, effective January 1, 2006. 2005 PA 184.

be given “by any means reasonably calculated to give prompt actual notice.”
Id. The prosecuting attorney who is prosecuting or has prosecuted the crime must also be notified. *Id.*

If the escape occurs before the defendant is hospitalized or admitted to a facility, the chief law enforcement officer of the agency in charge of the defendant’s detention must notify the prosecuting attorney. The prosecuting attorney must then notify the victim of the defendant’s escape. MCL 780.770(2).

If the escape occurs after the defendant has been hospitalized or admitted to a facility, the director of the hospital or facility must give the required notice. MCL 780.770(4).

CHAPTER 7

Victim Notification

7.17 Victim Responsibility for Notifying Agencies of Current Address and Telephone Number*

In the statutory language quoted in the second paragraph on page 159, delete “(c)” in the existing text and insert the following text:

“(c) The department of human services or county juvenile agency, as the prosecuting attorney directs, if the defendant is held in a juvenile facility.

“(d) The hospital or facility, as the prosecuting attorney directs, if the defendant is hospitalized in or admitted to a hospital or a facility.” MCL 780.756(4)(a)–(d).*

*Formerly Section 7.16. Renumbered by the addition of new Section 7.13 in this month’s updates.

*As amended, effective January 1, 2006. 2005 PA 184.

CHAPTER 7

Victim Notification

*Formerly
Section 7.16.
Renumbered by
the addition of
new Section
7.13 in this
month's
updates.

7.17 Victim Responsibility for Notifying Agencies of Current Address and Telephone Number*

Add the following text to the paragraph at the top of page 160:

A victim's address and telephone number provided for purposes of the notice authorized when a defendant is placed in a hospital or facility is also exempt from disclosure under Michigan's Freedom of Information Act. MCL 780.769a(3). Effective January 1, 2006, 2005 PA 184. See new Section 7.13 in this month's updates for detailed information about the notice requirements involving hospitals and facilities.

CHAPTER 8

The Crime Victim at Trial

8.4 Adjournments or Continuances

Preliminary examinations.

Effective January 1, 2006, MCR 6.110(B) was amended. On page 189, replace the second full paragraph with the following language:

Unless it is adjourned by the court, a preliminary examination must be held on the date specified by the court at the defendant's arraignment on the warrant or complaint. MCR 6.110(B).^{*} Good cause must be shown for adjournment, without regard to whether the parties consent or object. MCR 6.110(B) provides:

"If the parties consent, for good cause shown, the court may adjourn the preliminary examination for a reasonable time. If a party objects, the court may not adjourn a preliminary examination unless it makes a finding on the record of good cause shown for the adjournment. A violation of this subrule is deemed to be harmless error unless the defendant demonstrates actual prejudice."

^{*}As amended, effective January 1, 2006.

CHAPTER 8

The Crime Victim at Trial

8.12 Admissible Hearsay Statements by Crime Victims

C. Statements of Existing Mental, Emotional, or Physical Condition

Insert the following text before the partial paragraph at the bottom of page 246:

*249 Mich App
297 (2002).

In *People v Bauder*, ___ Mich App ___, ___ (2005), the Court of Appeals relied heavily on the reasoning in *People v Ortiz** in affirming the trial court's admission of evidence under MRE 803(3) where the victim's statements were "remarkably similar" to those of the victim in *Ortiz*. In *Bauder*, the defendant admitted killing the victim but argued at trial that the murder was not premeditated or deliberate. According to the *Bauder* Court:

"[The victim] had said that she was fearful of defendant, that defendant had threatened to kill her, her son, and her ex-husband, that she was tired of defendant's incessant demands for all kinds of sex and defendant's forcing sex if she refused, that she wanted to end her relationship with defendant and reconcile with her ex-husband, that defendant was jealous of her ex-husband, and that defendant stalked and beat her. These statements were evidence of the victim's state of mind, her fear, her intent to resist sex, and her intent to end her relationship with defendant.

* * *

"The [victim's statements were] generally admissible under MRE 803(3) to show the victim's state of mind The evidence was therefore relevant to a motive for murder, and indirectly relevant to defendant's intent and to whether defendant acted with premeditation and deliberation." *Bauder, supra* at ___ (footnote omitted).

CHAPTER 8

The Crime Victim at Trial

8.14 Former Testimony of Unavailable Witness

C. Defendant's Right to Confront the Witnesses Against Him or Her

Insert the following text after the last paragraph on page 264:

See also *People v Bauder*, ___ Mich App ___, ___ (2005) (citing *Walker* and *Geno*,* the Court of Appeals held that the victim's statements to friends, co-workers, and defendant's relatives in the weeks before her death were not testimonial statements and their admission did not violate defendant's right to confrontation).

**People v Walker*, 265 Mich App 530 (2005), lv gtd 472 Mich 928 (2005), and *People v Geno*, 261 Mich App 624 (2004).

Insert the following text after the second paragraph of the June 2005 update to page 264:

See also *People v Bauder*, ___ Mich App ___, ___ (2005) (because the murder victim-declarant was unavailable to testify as a result of the defendant's wrongdoing, the equitable doctrine of forfeiture applied to the defendant's constitutional claims concerning the admissibility of statements made by the victim to others in the weeks before her death).

CHAPTER 8

The Crime Victim at Trial

8.16 A Victim's or Spectator's Display of Emotions and a Defendant's Right to a Fair Trial

Insert the following language before Section 8.17 on page 267:

The trial court properly denied a defendant's motion for a mistrial after the court "scrupulously acted to [preserve the] defendant's right to a fair and impartial trial[.]" *People v Bauder*, ___ Mich App ___, ___ (2005). In *Bauder*, the trial was momentarily disrupted by an outburst from the victim's brother, who yelled that the defendant killed his sister. However, the defendant did not dispute his role in the victim's death, only that the murder was not premeditated or deliberate. Said the *Bauder* Court:

"We conclude that the courtroom disruption did not constitute adequate grounds for the trial court to grant a mistrial. The record shows that the trial court twice questioned the jurors regarding their ability to disregard the outburst, and remain fair and impartial. The court was also meticulous in the steps it took to ensure that defendant would receive a fair and impartial trial. . . . Further, the trial court instructed the jury that the outburst was not evidence." *Bauder, supra* at ___.

CHAPTER 9

Victim Impact Statements & Other Post-Disposition Procedures

9.5 Victim Participation in Parole Proceedings

A. Parole Guidelines and Victim Impact Statements

On page 282, before the last paragraph, insert the following text:

Any record of a crime victim's oral or written statement to a parole board or other panel having authority over the defendant's release on parole is exempt from disclosure under Michigan's Freedom of Information Act. MCL 780.771(4).*

*Effective
January 1,
2006. 2005 PA
184.

CHAPTER 10

Restitution

10.2 Claims for Restitution Made After Sentencing or Disposition

On page 313, replace the last paragraph in this section with the following information:

Effective January 1, 2006, 2005 PA 184 amended MCL 780.766, 780.794, and 780.826, by adding the following provision:

“The court may amend an order of restitution entered under this section on a motion by the prosecuting attorney, the victim, or the defendant based upon new information related to the injury, damages, or loss for which the restitution was ordered.” MCL 780.766(22); MCL 780.794(22); MCL 780.826(19).

CHAPTER 10

Restitution

10.5 Ordering Restitution in Conjunction With Informal Juvenile Dispositions, Conditional Sentences, Delayed and Deferred Sentences, and Drug Treatment Court Participation

A. Required Restitution When Ordering an Informal Juvenile Disposition

On page 316, replace the last sentence in the only paragraph in this subsection with the following language:

See also MCL 780.794(2),* which states that the court must order restitution under MCL 780.794 whenever an offense is resolved informally and no dispositional hearing is held, whenever an offense is resolved by assigning the juvenile to youthful trainee status, by delaying a juvenile's sentence or deferring entry of a judgment of guilt, or whenever an offense is resolved "in another way that is not an acquittal or unconditional dismissal[.]"

*As amended by 2005 PA 184, effective January 1, 2006.

C. Restitution Ordered in Conjunction With Delayed and Deferred Sentences and Dispositions Under the Holmes Youthful Trainee Act

Delayed sentences.

In the first paragraph on page 317, replace the fourth sentence and the citation following it with the following language:

Where a sentence is delayed for a felony offense, a court must order the restitution required by MCL 780.766. MCL 780.766(2), as amended, effective January 1, 2006. 2005 PA 184. A court must also order the required restitution when a sentence is delayed in cases involving juveniles or in cases involving misdemeanor offenses. MCL 780.794(2) and MCL 780.826(2).*

*As amended, effective January 1, 2006. 2005 PA 184.

Deferred sentences.

Near the bottom of page 317, before the paragraph beginning "**Deferred proceedings under the Holmes Youthful Trainee Act,**" insert the following text:

*As amended,
effective
January 1,
2006. 2005 PA
184.

In all cases where a juvenile's or defendant's judgment of guilt is deferred, the court must order the required restitution. MCL 780.766(2), MCL 780.794(2), and MCL 780.826(2).*

CHAPTER 10

Restitution

10.5 Ordering Restitution in Conjunction With Informal Juvenile Dispositions, Conditional Sentences, Delayed and Deferred Sentences, and Drug Treatment Court Participation

C. Restitution Ordered in Conjunction With Delayed and Deferred Sentences and Dispositions Under the Holmes Youthful Trainee Act

Near the bottom of page 318, replace the second sentence in the last paragraph with the following text:

Whenever an eligible defendant is assigned to youthful trainee status in cases involving felony or misdemeanor offenses or cases involving juvenile defendants, the court must order the restitution required under the applicable section. MCL 780.766(2), MCL 780.794(2), and MCL 780.826(2).*

*As amended, effective January 1, 2006. 2005 PA 184.

CHAPTER 10

Restitution

10.6 Persons or Entities Entitled to Restitution

D. Parents of a Minor Victim

Immediately before Section 10.7 on page 325, add the new subsection (D) as indicated above and insert the following text after the new subsection:

*2005 PA 184.

If the victim is a minor, the court must order the offender to pay the minor's parent or parents a reasonable amount of restitution for several specific activities or expenditures related to the crime. Amendments to MCL 780.766, MCL 780.794, and MCL 780.826, effective January 1, 2006, added the following provision to all three articles of the CVRA:*

"If the victim is a minor, the order of restitution shall require the defendant to pay to a parent of the victim an amount that is determined to be reasonable for any of the following that are actually incurred or reasonably expected to be incurred by the parent as a result of the crime:

"(a) Homemaking and child care expenses.

"(b) Income loss not ordered to be paid under [MCL 780.766(4)(h), MCL 780.794(4)(h), or MCL 780.826(4)(h)].*

"(c) Mileage.

"(d) Lodging or housing.

"(e) Meals.

"(f) Any other cost incurred in exercising the rights of the victim or a parent under this act." MCL 780.766(24), MCL 780.794(24), and MCL 780.826(21), as amended.

*See this month's updates to Section 10.10(A) for discussion of these statutory provisions.

CHAPTER 10

Restitution

10.8 Amount of Restitution Required

On page 326, add the following to the end of the penultimate paragraph:

Effective January 1, 2006, provisions added to MCL 780.766, MCL 780.794, and MCL 780.826 authorize restitution for a parent's "traveling expenses" when the victim is a minor.* Pursuant to MCL 780.766(24)(c)–(e), MCL 780.794(24)(c)–(e), and MCL 780.826(21)(c)–(e), when the victim is a minor, the amount of restitution ordered must include a reasonable amount for the cost of a parent's mileage, lodging, and meals (incurred as a result of the crime).

*2005 PA 184.

CHAPTER 10

Restitution

10.9 Calculating Restitution Where the Offense Results in Property Damage, Destruction, Loss, or Seizure

Effective January 1, 2006, 2005 PA 184 amended MCL 780.766, 780.794, and 780.826 to eliminate the suggestion that a court has discretion in ordering restitution for property damage or loss. Replace the first paragraph at the top of page 327 with the following language:

If criminal conduct results in damage to or loss or destruction of a victim's property, or if it results in the seizure or impoundment of a victim's property, the court must order the defendant or juvenile to pay restitution to the victim. The relevant statutory provisions, MCL 780.766(3)(a)–(c), MCL 780.794(3)(a)–(c), and MCL 780.826(3)(a)–(c), determine the amount of restitution to be ordered in such cases. These provisions state that the court must order the defendant or juvenile to do one or more of the following:

CHAPTER 10

Restitution

10.10 Calculating Restitution Where the Offense Results in Physical or Psychological Injury, Serious Bodily Impairment, or Death

A. Expenses Related to Physical or Psychological Injury

Effective January 1, 2006, 2005 PA 184 amended MCL 780.766, 780.794, and 780.826 to eliminate the suggestion that a court has discretion in ordering restitution for expenses related to physical or psychological injury. Replace the paragraph before the quoted provisions near the bottom of page 328 with the following language:

If criminal conduct results in physical or psychological injury to a victim, the court must order the defendant or juvenile to pay restitution for professional services and devices, physical and occupational therapy, lost income, medical and psychological treatment for the victim's family, and homemaking and child care expenses. MCL 780.766(4)(a)–(e) and (h)* state that the court must order the defendant or juvenile to do one or more of the following, as applicable:

*Effective
January 1,
2006. 2005 PA
184.

Insert the following new provision and text after “(e)” in the quoted language at the top of page 329:

“* * *

“(h) Pay an amount equal to income actually lost by the spouse, parent, sibling, child, or grandparent of the victim because the family member left his or her employment, temporarily or permanently, to care for the victim because of the injury.”

MCL 780.794(4)(a)–(e) and (h) and MCL 780.826(4)(a)–(e) and (h) contain substantially similar provisions.

CHAPTER 10

Restitution

10.17 Restitution Ordered As a Condition of Probation or Parole

B. Wage Assignment by Employed Defendant or Juvenile as a Condition of Probation

Replace the first sentence in the first paragraph near the bottom of page 336 with the following text:

*2005 PA 184.

Whenever a defendant or juvenile is employed and restitution is ordered as a condition of probation, the court must order the defendant or juvenile “to make regularly scheduled restitution payments.” MCL 780.766(18), MCL 780.794(18), and MCL 780.826(15), as amended, effective January 1, 2006.* The court must order the defendant or juvenile to execute a wage assignment to pay the restitution if the defendant or juvenile misses two or more scheduled restitution payments. MCL 780.766(18), MCL 780.794(18), and MCL 780.826(15), as amended.

CHAPTER 10

Restitution

10.19 Payment of Restitution When Defendant or Juvenile Is Sentenced to Jail or the Department of Corrections or Placed in a Juvenile Facility

Near the top of page 340, change the title of Section 10.19 as indicated above and insert the following new subsection and text before the first paragraph of this section:

A. Payment of Restitution When Defendant Is Sentenced to Jail

Effective January 1, 2006, 2005 PA 184 added MCL 780.767a and MCL 780.830a, which authorize the deduction of monthly funds received by defendants who are sentenced to jail for the payment of restitution ordered under MCL 780.766 and MCL 780.826. A substantially similar method of deducting such funds from defendants who are sentenced to prison is authorized by MCL 791.220h.*

MCL 780.767a(2) states:

“If a defendant who has been sentenced to jail is ordered to pay restitution under [MCL 780.766], and if the defendant receives more than \$50.00 in a month, the sheriff shall deduct 50% of the amount over \$50.00 received by the defendant for payment of the restitution. The sheriff shall promptly send the deducted money to the crime victim as provided in the order of restitution when it accumulates to an amount that exceeds \$100.00, or when the defendant is released to probation or discharged on the maximum sentence.”

MCL 780.830a(1) contains a substantially similar provision.

The sheriff must give a defendant written notice of all deductions taken and all payments made. MCL 780.767a(3) and MCL 780.830a(2). The deductions, payments, and notices required under MCL 780.767a(2) and (3) and MCL 780.830a are effective until all of the restitution has been paid. MCL 780.767a(3) and MCL 780.830a(2). Any agreement made to modify the requirements of MCL 780.767a(3) or MCL 780.830a(2) is prohibited and is void. MCL 780.767a(3) and MCL 780.830a(2).

*Provisions similar to those in MCL 791.220h are included in MCL 780.767a as well and are discussed below.

B. Payment of Restitution When Defendant Is Sentenced to the Department of Corrections

Immediately after the text in new subsection (A), insert the new subsection (B) as indicated above. In addition, add the following text after the **Note** on page 340:

Effective January 1, 2006, 2005 PA 184 added MCL 780.767a. Substantially similar to MCL 791.220h(1) and (3), the relevant provisions of MCL 780.767a require the Department of Corrections to deduct money from a prisoner's account to pay restitution that has been ordered. MCL 780.767a(1) and (3) state, in relevant part:

“(1) If a defendant who has been sentenced to the department of corrections is ordered to pay restitution under [MCL 780.766], and if the defendant receives more than \$50.00 in a month, the department of corrections shall deduct 50% of the amount over \$50.00 received by the defendant for payment of the restitution. The department of corrections shall promptly send the deducted money to the crime victim as provided in the order of restitution when it accumulates to an amount that exceeds \$100.00, or when the defendant is paroled, transferred to community programs, or discharged on the maximum sentence.

* * *

“(3) The department of corrections . . . shall notify the defendant in writing of all deductions and payments made under this section. The requirements of this section remain in effect until all of the restitution has been paid. The department of corrections . . . shall not enter into any agreement with a defendant that modifies the requirements of this section. An agreement in violation of this subsection is void.”

At the bottom of page 341, immediately before Section 10.20, add the following new subsection and text:

C. Payment of Restitution When a Juvenile Is Sentenced to the Department of Corrections, Jail, or a Juvenile Facility

If a juvenile is ordered to pay restitution under MCL 780.794 and is remanded to the Department of Corrections, the court must provide the department with a copy of the restitution order. MCL 780.794(19). Effective January 1, 2006, new provisions involving restitution and sentencing were added to the juvenile article of the CVRA.* For a juvenile remanded to the Department of Corrections, to jail, or to a juvenile facility who receives more than \$50.00 in a month, MCL 780.796b(1)–(3) require that 50% of the amount over \$50.00

*2005 PA 184.

be deducted for payment of the restitution owed by the juvenile. Whenever the amount deducted from a juvenile's monthly excess accumulates to more than \$100.00, MCL 780.796b(1)–(3) further require the Department of Corrections, the sheriff, the County Juvenile Agency, or the Department of Human Services to promptly send the deducted money to the crime victim as instructed by the order of restitution. Regardless of the amount accumulated, the deducted money must be promptly sent to the crime victim when the juvenile is paroled, transferred to community programs, released to probation or from the juvenile facility, or discharged on the maximum sentence. MCL 780.796b(1)–(3).

MCL 780.796b(4)* requires that notice be given to the juvenile concerning the deductions discussed above:

“The department of corrections, sheriff, department of human services, or county juvenile agency, as applicable, shall notify the juvenile in writing of all deductions and payments made under this section. The requirements of this section remain in effect until all of the restitution has been paid. The department of corrections, sheriff, department of human services, or county juvenile agency shall not enter into any agreement with a juvenile that modifies the requirements of this section. An agreement in violation of this subsection is void.”

*Effective
January 1,
2006. 2005 PA
184.

CHAPTER 10

Restitution

10.20 Modification of Method of Payment of Restitution

Replace the first paragraph on page 341 and the quoted paragraph at the top of page 342 with the following text:

*As amended,
effective
January 1,
2006. 2005 PA
184.

Subject to the requirements of MCL 780.766(18)—that an employed defendant or juvenile make regularly scheduled restitution payments and execute a wage assignment if two or more payments are missed—MCL 780.766(12)* authorizes a defendant or juvenile to petition the court for a change in the method of payment:

“Subject to subsection (18), a defendant who is required to pay restitution and who is not in willful default of the payment of the restitution may at any time petition the sentencing judge or his or her successor to modify the method of payment. If the court determines that payment under the order will impose a manifest hardship on the defendant or his or her immediate family, and if the court also determines that modifying the method of payment will not impose a manifest hardship on the victim, the court may modify the method of payment.”

Near the bottom of page 342, immediately before Section 10.21, insert the following text:

*2005 PA 184.

Amendments to MCL 780.766(22), MCL 780.794(22), and MCL 780.826(19), effective January 1, 2006, permit a court, under very specific circumstances, to amend a restitution order.* As amended, the provisions in each article of the CVRA state:

“The court may amend an order of restitution entered under this section on a motion by the prosecuting attorney, the victim, or the defendant based upon new information related to the injury, damages, or loss for which the restitution was ordered.”

CHAPTER 10

Restitution

10.21 Civil Enforcement of Restitution Orders

B. Restitution Order Is Not Dischargeable in a Bankruptcy Proceeding

Near the middle of page 345, insert the following text immediately before subsection (C):

MCL 780.766(23), MCL 780.794(23), and MCL 780.826(20), as amended by 2005 PA 184, effective January 1, 2006, impose a notice requirement in cases where a defendant or juvenile files bankruptcy. MCL 780.766(23) states:

“A court that receives notice that a defendant who has an obligation to pay restitution under this section has declared bankruptcy shall forward a copy of that notice to the prosecuting attorney. The prosecuting attorney shall forward the notice to the victim at the victim’s last known address.”

MCL 780.794(23) and MCL 780.826(20) contain substantially similar provisions.

CHAPTER 10

Restitution

10.23 Allocation of Fines, Costs, Restitution, Fees, Assessments, and Other Payments

Insert the following text before the last paragraph on page 346:

*2005 PA 184.

When a defendant or juvenile who is subject to any combination of fines, costs, restitution, fees, assessments, or other payments arising from more than one proceeding makes a payment but does not specify for which proceeding the payment is intended, “the court shall first apply the money paid to a proceeding in which there is unpaid restitution to be allocated as provided in this section.” MCL 780.766a(1), MCL 780.794a(1), and MCL 780.826a(1), as amended, effective January 1, 2006.*

CHAPTER 10

Restitution

10.24 Unclaimed or Refused Restitution

Effective January 1, 2006, 2005 PA 184 amended MCL 780.766(21), MCL 780.794(21), and MCL 780.826(18) to specify that restitution refused by a victim may be deposited in the “crime victim’s rights fund.” On page 349, change the title of Section 10.24 as indicated above and replace the first sentence of the sole paragraph in this section with the following:

If a person or entity entitled to restitution cannot be located, refuses to claim the restitution within two years, or refuses to accept the restitution, the restitution to which the person or entity is entitled must be deposited in the “crime victim’s rights fund.”

CHAPTER 12

The Relationship Between Criminal or Juvenile Proceedings & Civil Actions Filed by Crime Victims

12.8 Recovering Proceeds From Defendant or Juvenile Under Michigan's "Son of Sam" Law

Effective January 1, 2006, 2005 PA 184 amended MCL 780.768, MCL 780.797, and MCL 780.831. Beginning at the bottom of page 398, replace the first sentence in this section with the following:

Under all three articles of the Crime Victim's Rights Act (CVRA), a defendant or juvenile may be prevented from receiving proceeds from the sale of his or her recollections, thoughts, or feelings about an offense; memorabilia related to an offense; or his or her property if its value has been increased by the offender's notoriety.

Replace the first quoted paragraph near the top of page 399 with the following text:

"A person convicted of a crime shall not derive any profit from the sale of any of the following until the victim receives any restitution or compensation ordered for him or her against the defendant, expenses of incarceration are paid under subsection (3), and any balance in the escrow account created under subsection (2) is paid under subsection (4):

"(a) The person's recollections of or thoughts or feelings about the offense committed by the person.

"(b) Memorabilia related to the offense committed by the person.

"(c) The person's property if its value has been enhanced or increased by the person's notoriety."

*MCL 780.768(2), as amended, effective January 1, 2006. 2005 PA 184.

In the second sentence of the paragraph on page 399 beginning "Enforcement of the foregoing provision..." change the phrase "any interested party" to "all interested parties."*

Beginning with the quoted paragraph following the paragraph beginning “Enforcement of the foregoing provision...” on page 399 and continuing through the second full paragraph on page 400, replace the existing text with the following language:

“(2). . . that the defendant forfeit all or any part of proceeds received or to be received by the defendant or the defendant’s representatives or assignees from any of the following:

“(a) Contracts relating to the depiction of the crime or the defendant’s recollections, thoughts, or feelings about the crime, in books, magazines, media entertainment, or live entertainment.

“(b) The sale of memorabilia relating to the crime.

“(c) The sale of property of the defendant, the value of which has been enhanced or increased by the defendant’s notoriety arising from the crime.

“(3) Proceeds ordered forfeited under subsection (2) shall be held in an escrow account for a period of not more than 5 years.” MCL 780.768(2)–(3).*

*As amended, effective January 1, 2006. 2005 PA 184.

See also MCL 780.797(2)–(3) and MCL 780.831(2)–(3) for substantially similar provisions in the juvenile and misdemeanor articles of the CVRA.*

*As amended, effective January 1, 2006.

During the existence of an escrow account, the proceeds in the account must be used to satisfy the following, in descending order of priority:

“(a) An order of restitution entered under [MCL 780.766].

“(b) Any civil judgment in favor of the victim against the defendant.

“(c) Any reimbursement ordered under the prisoner reimbursement to the county act, 1984 PA 118, MCL 801.81 to 801.93, or the state correctional facility reimbursement act, 1935 PA 253, MCL 800.401 to 800.406.

“(d) Fines, costs, and other assessments ordered against the defendant.” MCL 780.768(4)(a)–(d).*

*As amended, effective January 1, 2006. 2005 PA 184.

See also MCL 780.797(4)(a)–(d) and MCL 780.831(4)(a)–(d) for substantially similar provisions in the juvenile and misdemeanor articles of the CVRA. Under the juvenile article of the CVRA, funds must be used to reimburse the costs of detaining the juvenile. MCL 780.797(4)(c).

At the end of the five-year escrow period, any balance remaining in the account must be paid to the Crime Victim's Rights Fund. MCL 780.768(5), MCL 780.797(5), and MCL 780.831(5).